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NO. 87-1605

In the Supreme Court of the United States

OCTOBER TERM, 1987

SCHOOL BOARD OF THE PARISH OF LIVINGSTON, Louisiana, et al.,
Petitioners

V.

LOUISIANNA STATE BOARD OF ELEMENTARY AND SECONDARY EDUCATION, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

In addition to the question presented in the briefs filed by co-respondents, the following question is presented for review:

> Whether the Legislative Auditor's authority to conduct post-audits of the financial transactions of Louisiana's State Department of Education, Treasurer's Office, and Board of Elementary and Secondary Education, includes the authority to administer the state's public school financing system?

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OPINIONS BELOW

The citations to the opinions and judgments delivered in the courts below are adequately set forth in the Petition at pgs. 1 and 2.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition at pg. 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS

In addition to the constitutional and statutory provisions cited in the briefs filed by co-respondents, the following constitutional and statutory provisions relating to the question presented for review herein are reproduced at Appendix A, infra, pg. A-1:

Louisiana Constitution of 1974:

Article 3, Section 11

Louisiana Revised Statutes:

R.S. 24:513
R.S. 24:603

STATEMENT OF THE CASE

In addition to the statement of facts appearing in the decisions of the District Court (Petitioners' Appendix A at pgs. 28a-43a) and the Court of Appeal (Petitioners' Appendix B, at pgs. 1a-27a) and in the briefs filed by co-respondents, the Legislative Auditor offers the following statement.

Petitioners have drawn respondent, Legislative Auditor (Auditor), into this controversy through allegations that the Auditor administers the state's public school financing system. Specifically, petitioners allege that the Auditor is responsible for (1) granting and/or enforcing tax exemptions from school and/or any other taxes; (2) delegating taxing powers for the support of public schools in Louisiana; (3) having taxing powers delegated to the Auditor for the support of public schools in Louisiana; (4) distributing state revenue sharing money and/or local tax avails for the support of public elementary and secondary schools in Louisiana; (5) appropriating and/or allocating state funds to the Minimum Foundation Program and/or the individual state boards; and (6) calculating, preparing, approving, and/or implementing the Minimum Foundation Program Formula upon which the allocation of state funds to public education is based.

Respondent, Auditor, along with co-respondents and petitioners, filed cross-motions for summary judgment. Citing applicable statutes and constitutional provisions, and submittiing uncontroverted affidavits, the Auditor argued that he possessed neither the power nor the authority to administer the state's public school financing system.

On February 21, 1986, the United States District Court, Middle District of Louisiana, heard oral arguments, after which summary judgment was granted as to respondent, Joseph H. Burris, Legislative Auditor for the State of Louisiana. The remaining motions were taken under submission.

Subsequently, the District Court denied petitioners' motion for summary judgment and sustained a motion for summary judgment filed by the remaining respondents thereby dismissing petitioners' action. The Court concluded that the Louisiana tax assessment/exemption/distribution system, as if affects the funding of public education in the State of Louisiana, does not violate Article IV, Section 2, or the Fourteenth Amendment, Section 1 of the United States Constitution.

On appeal to the Fifth Circuit Court of Appeals, the Distirct Court judgment was affirmed.

SUMMARY OF ARGUMENT

In addition to the summaries of argument presented by co-respondents, the following summary is presented by the Auditor.

The constitutional and statutory provisions creating the Office of Legislative Auditor, and prescribing his duties and functions, authorize the Auditor to conduct post-audits of the financial transactions of the state, its agencies, and its political subdivisions. The authority to conduct post-audits does not encompass the administration of the state's public school financing system. Thus, the opinions below granting the Auditor's motion for summary judgment and dismissing petitioners' claim are correct.

ARGUMENT

In addition to the arguments advanced by co-respondents, the following argument is presented by the Auditor.

LSA-Const. Art. 3, Section 11 is the constitutional provision which establishes and continues the Office of Legislative Auditor. It stipulates that the Auditor shall perform the duties and functions provided by law related to auditing fiscal records of the state, its agencies, and political subdivisions. The law prescribing the duties and functions relating to the audit of fiscal records of the state, its agencies, and political subdivisions is found at LSA-R.S. 24:513. It gives the Auditor the authority to examine and audit the books and accounts of the State Treasurer, as well as all public boards and commissions, or any agency or department or political subdivision of the state, or any public official or employee.

It is clear from these constitutional and statutory provisions that the Auditor's powers and duties are limited to the post-audit of the financial transactions of the state, its agencies, and political subdivisions. Despite petitioners' erroneous and unsupported assumptions to the contrary, there is absolutely no legal authority which requires or permits the Auditor to impose taxes, grant tax exemptions, distribute revenue sharing funds, implement the Minimum Foundation Program Formula, and/or distribute the Minimum Foundation Program funds. In the absence of such authority, the Auditor respectfully submits that he does not now perform, nor has he ever performed, any of the functions which form the basis upon which petitioners seek to join him as a party to this litigation. (See the uncontroverted affidavit of Joseph H. Burris, Legislative Auditor, at pgs. 131-133 of the original record.)

Petitioners erroneously speculate that the Auditor participates in the preparation of "SRS Forms" (i.e., those documents containing the calculations which form the basis for the distribution of state revenue sharing money to the various taxing authorities). As can be seen from the

uncontroverted affidavit of Vernon W. Dugas, past Director of Audit Support Services, the Legislative Auditor's Office does not participate in the preparation of said forms. (See affidavit at pgs. 232-233 of the original record).

Although the Auditor conducts post-audits of Louisiana's Board of Elementary and Secondary Education, Department of Education, and State Treasurer, as required by LSA R.S. 24:513, these audits do not establish the slightest nexus between respondent and petitioners' allegations. The uncontroverted affidavit of Grover C. Austin, Assistant Legislative Auditor, establishes that the audit reports resulting from these post-audits constitute reports on financial and compliance audits. As such, they neither address nor make recommendations, comments and/or guidelines relative to the issues of the equitability, legality and/or constitutionality of the State Revenue Sharing Act, the Minimum Foundation Program Formula, and/or the distribution of state moneys thereunder. (See affidavit at pgs. 234-236 of the original record).

Petitioners further erroneously speculate that respondent has the duty to advise the Louisiana Legislature with respect to the alleged need to correct the Revenue Sharing Acts and the Minimum Foundation Program Formula. This suggestion is completely without merit. First, it offends the intent of the redactors of our Louisiana Constitution that the Auditor's fiscal advice relate to auditing functions and not to the social, economic, and political remifications of legislating. (See pgs. 237-240 of the original record.)

Second, to impose such a duty upon the Auditor would infringe upon the powers and duties of the Legislative Fiscal Office enumerated in LSA R.S. 24:603.

The post-audits conducted by the Auditor are governed by the "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions," promulgated by the Comptroller General of the United States. Respondent respectfully submits that for him to assume the role of critic of the legislation relating to revenue sharing and the Minimum Foundation Program Formula, or assumed the role of administrator of the distribution of funds thereunder, would constitute involvement in the legislature's and co-respondents' decision-making and management capacities. Such involvement would result in an unacceptable impairment to the Auditor's independence in carryinng out subsequent post-audit functions.

Respondent further submits that the interpretation given by the redactors of the Louisiana Constitution, the members of the Legislature, and respondent's own officers and employees to the constitutional and statutory provisions regulating respondent's operations has historically been, and continues to be, that respondent's audit authority does not extend to advising the legislature as to the equitability, constitutionality and/or legality vel non of legislation, specifically, the Revenue Sharing Act, the Miminum Foundation Program Formula, and the distribution of state moneys thereunder.

Although respondent realizes that the judiciary is the final arbiter of statutory construction, the interpretation given by the officers or agency charged with its administration is entitled to substantial weight, and an agency's construction of its own regulations is entitled to even greater deference. *Avoyelles Sportsmen's League, Inc., et al v. Marsh*, 715 F.2d 897, 5th Cir. (1983).

CONCLUSION

The undisputed facts clearly indicate that respondent's post-audit functions and duties do not extend to administering the state's public school financing system. For these reasons, in addition to the reasons stated by co-respondents in their briefs, it is respectfully submitted that that Petition for Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

LOUISIANA CONSTITUTION
ARTICLE 3

&11. Legislative Auditor

Section 11. There shall be a legislative auditor responsible solely to the legislature. He shall serve as a fiscal advisor to it and shall perform the duties and functions provided by law related to auditing fiscal records of the state, its agencies, and political subdivisions. He shall be elected by the concurrence of a majority of the elected members of each house and may be removed by the concurrence of two/thirds of the elected members of each house.

LOUISIANA REVISED STATUTES, TITLE 24

* * * *

&513. Powers and duties of Legislative Auditor; audit reports as public records; assistance and opinions of attorney general; frequency of audits.

A. The legislative auditor shall have authority to examine and audit the books and accounts of the state treasurer as well as all public boards and commissions, or any agency or department or political subdivision of the state, or any public official or employee and shall have access to all papers, books, documents, films, tapes, and any other forms of recordation, including but not limited to computers and recording devices, in all offices which he may examine or audit under the provisions of this Chapter....

* * * *

& 603. Duties and functions

Subject to the general direction and supervision of the Joint Legislative Committee on the Budget, the legislative fiscal office shall have the following duties and functions:

(1) To develope and make available to the legislature and its committees such fiscal information as will assist the legislature or any legislative committee in its deliberations with the view of pointing out unnecessary programs, projects, and functions; calling attention to inefficient and uneconomical practices; making recommendations for improvement, and carrying out other similar functions.

(2) To continuously review existing and proposed programs and budgets of state agencies.

* * *

(5) To conduct other studies and perform other duties which may be of assistance in directing the financial affairs of the state.

(6) To perform, at the direction of either house or any committee thereof, in-depth studies of programs or statewide policies including studies of a program's accomplishments, the manner in which a program's appropriation has been expended, and the future direction of a program.

* * *

(18) To develop and maintain a comprehensive information system on the receipt of revenues by local governmental subdivisions and political subdivisions from local, state, and federal sources, as well as the expenditures of these revenues and to submit a summary of this information annually to the legislature.